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# SUBSTANTIVE EDITING VERSUS TECHNICAL EDITING: HOW LAW REVIEW EDITORS DO THEIR JOB

Anne Enquist\*

Editor. The very word conjures up images of an older man with a starched white shirt hunched over a manuscript, a permanent scowl on his face. Or perhaps a strait-laced woman, again older, hair pulled back tight in a bun, her red pen mercilessly lining out words and correcting mistakes. Editing. That word may bring similar images to mind, but it is more likely to be associated with one's own late night efforts to give a painfully extracted draft a final hard look, hoping to catch the extra "e" in "judgement" that spell check misses, trying to spot spacing errors in citations, and double-checking page numbers for quotations.

Now you are an editor and, wonder of wonders, you are expected to edit—edit the writing of other law students, all from the top of the class, who you are convinced must all be better writers than you, AND edit the writing of . . . *law professors!* HAS EVERYONE GONE NUTS? These people are experts with degrees from places with more ivy than the Sherwood Forest. Their names are on casebooks, endowed chairs, and letterheads listing the members of prestigious firms. Even the young ones, who have not achieved immortality yet, are intimidating. How is a lowly law student, even one who happened to make law review, supposed to edit their writing?

Deep breaths. Deep breaths. O.K. Where to start? Let's see: hunch over the manuscript, grab a red pen, and look for errors. Right? Wrong. At least not yet. The rush toward that type of editing, which is one aspect of technical editing, is one of the most common mistakes new law review editors make. Having only limited experience and limited views of editing, many new law review editors fail to realize that editing is a much broader task than just

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\* © Anne Enquist, 2000. All rights reserved. Associate Professor of Legal Writing, Seattle University School of Law. Anne Enquist also is the writing advisor at Seattle University School of Law. She has served as one of *Seattle University Law Review's* faculty advisors for the last eight years. She would like to thank Professor Eric Chiappinelli, former faculty advisor to the *Seattle University Law Review*; Professor Connie Krantz, former note and comment editor (1988–1989); Ms. Gretchen Graham Salazar, former editor in chief (1995–1996); and Professor Laurel Currie Oates for their comments and help on this Article.

cutting out excess verbiage, adding commas, and correcting typos. Indeed, jumping ahead to this type of technical editing is a little like putting up the wallpaper before you decide whether the house will have three or four bedrooms, or whether the house will be a rambler or a split level entry.

Approximately ten years ago, we realized at *Seattle University Law Review* that we were often making that same mistake in editing our articles. An article would have worked its way up through our process and be in the final editing stages only to have someone, probably the editor in chief, spot a fundamental problem with the article's focus or organization. Needless to say, this was not an efficient or effective way to publish a review. Instead, the *Review* needed more of a triage approach to editing, in which we addressed an article's most serious problems first and then worked our way down to smaller and less important problems. In short, what we did not want to do was spend time editing a sentence only to find that the more important problem was that the whole section containing the sentence needed to be deleted or reconceptualized.

To rectify the problem, we developed a workshop that we offer in the fall for all new members of the *Review* on the difference between substantive and technical editing. The workshop begins with the same general definition of substantive editing and technical editing that will be used in this Article. Substantive editing is the process of examining and commenting on an article's substance, that is, the ideas, arguments, and the overall organization. Substantive editing is concerned with *what* the article says. Technical editing, on the other hand, is the process of examining and commenting on an article's technical features, that is, the words, sentences, and minor details. Technical editing is concerned with *how* the author expresses his or her ideas.

This Article will describe the key points that we emphasize in that workshop: what to look for in a substantive edit; how to do a substantive edit; what to look for in a technical edit; how to do a technical edit; and the conclusion. Appendices A and B are examples of substantive edits that resulted in articles we were proud to publish.<sup>1</sup>

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1. Appendices A and B were published as written by the original authors and were not edited for content or style.

### A. What to Look for in a Substantive Edit

Substantive edits should focus on the following six aspects of the article: (1) the thesis; (2) the line of reasoning and arguments; (3) the large-scale organization; (4) what is not in the article; (5) what is in the text versus what is in the footnotes; and (6) the author's voice. For articles that reach the substantive editing stage in fairly rough shape, the editor may have to focus first on only the thesis, line of reasoning, and large-scale organization. Happily, however, some articles reach substantive editing in very good or even excellent shape. In these instances, the editor probably will have less to say about the first five aspects and may be able to begin commenting on "small-scale organization." As a general rule, though, "large-scale organization," which is part of substantive editing, includes everything from the paragraph up, and "small-scale organization," which is part of the technical editing process, includes everything from the paragraph down.

#### *1. The Thesis*

An article worthy of publication must have a timely, original, and important thesis that is clearly articulated. Editors owe it to authors, and to themselves, to focus on the timeliness of an article and its thesis early in the process. To determine its timeliness, they must consider the review's publication schedule, pending cases, etc. The proverbial "window of opportunity" applies to many law review articles. It is up to the editors, as well as the author, to pay attention to when that window is opening and closing on a given thesis.

Testing a thesis for originality is more than just being sure the author has not plagiarized the language from another author's thesis. An original thesis makes a new point; it says something that has not been said before. The originality requirement may seem a bit intimidating at first, but a thesis can be original without being earth-shattering. A modest contribution to the conversation about a developing area of law is still a contribution and one worthy of publication.

Nevertheless, a modest contribution still should meet the requirement of being an important contribution. The publication process is expensive and time-consuming for both authors and law review editors. Devoting time and money to publishing an article

that makes a trivial point is not only a waste, it also undermines the reputation of the review that publishes it.

The most common problem related to a thesis, however, is not whether it is timely, original, or important. A surprising number of articles come in without a thesis, or at least without a clearly articulated thesis. These articles usually have a clear topic. However, a thesis is not the same thing as a topic. A topic is static; it carves out an area for the article. An example of a topic would be "the secret damages agreements between Exxon and seven Seattle food processors after the *Valdez* oil spill." As this example demonstrates, topics are usually noun-laden phrases. They suggest that a report will follow, not an argument. Even though descriptive, report-like articles can be informative, they tend to be rather bland. The expectation for law review articles is that they do more than simply describe what is; they are persuasive pieces that argue about what is, what could or should be, and what effect it will have. Consequently, most law reviews either steer away from articles with a topic but no thesis or immediately begin helping the author articulate an unstated thesis.

A thesis is dynamic; it takes a stand on a topic. Because a thesis is an assertion about the topic, verbs are usually key words. Through the thesis, the author articulates a position that he or she will then support with arguments. An example of a thesis would be "the secret damages agreements between Exxon and seven Seattle food processors after the *Valdez* oil spill," "like Mary Carter agreements, 'undercut the jury system, prolong litigation, contravene legal ethics, and run afoul of public policy.'"<sup>2</sup> As this thesis demonstrates, having a thesis inevitably brings energy and voice to an article. The author is on a mission to convince the reader to adopt his or her position about the topic.

Because thesis statements seem so basic, like something out of a high school English class, some new law review editors are surprised at how many articles submitted for publication lack a clearly articulated thesis. Nevertheless, even experts can forget some of the basics when they get wrapped up writing about their topic.

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2. Amy Edwards Wood, Student Author, *In re the Exxon Valdez: The Danger of Deception in a Novel Mary Carter Agreement*, 21 Seattle U. L. Rev. 413, 415 (1997).

## 2. *The Line of Reasoning and Arguments*

The substantive edit also is the time to look at the line of reasoning in the article and to examine the types of arguments the author employs as he or she develops support for the thesis. Typically, most articles use deductive reasoning, although inductive reasoning can be effective. The substantive edit also is the time to check for logical fallacies such as half-truths, begging the question, or circular reasoning.

In examining the types of arguments in the article, editors should read for all the “standard moves” of legal argumentation, double-checking for missing rebuttal or policy arguments, particularly countervailing policy arguments.

## 3. *The Large-Scale Organization*

A surprising number of law review articles initially have a problem with large-scale organization. No doubt this problem stems from authors having done such extensive research that they are still grappling with how to get all they want to say under control.

Casenotes,<sup>3</sup> or the analysis and critique of one case, tend to be the easiest to organize, because they usually can fit into the following four-part format: a critical explanation of the facts of a recent and significant court opinion, discussion of its effect on the law, the author’s opinion about whether the opinion makes good or bad law, and a conclusion. Most other law review articles fall into some expanded version of the problem/solution format. In any case, the primary considerations for large-scale organization are that the organizational scheme is logical and that it satisfies readers’ expectations.

In addition to the stated thesis, the traditional way of setting up reader expectations in law review articles is to put an explicit roadmap to the article near the end of the introduction or opening to the article, which outlines the basic structure of the article. For example, author Susan L. Ronn included the following roadmap in her 1996 *Seattle University Law Review* article arguing that Muslim women should have been able to seek redress in a United States district court for the horrors of ethnic cleansing:

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3. See Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* 10–12 (2d ed., West 2000) (elaborating on the terminology used for student pieces).

Part I of this Article briefly summarizes the history of the conflict in Bosnia-Herzegovina and documents the extensive rapes of Muslim women by Bosnian Serbs. Part II sets out the district court's opinion in *Doe v. Karadzic*. Part III asserts that the *Doe* court erred in refusing to grant jurisdiction over the defendant under either the ATCA or the TVPA. Part IV discusses recognition of states and the elements of statehood under international law. This section concludes that the Bosnian Serb entity led by Radovan Karadzic, meets the elements of statehood and should therefore be held to a state's obligations. Part V asserts that because Karadzic can be found to have acted under the authority of either his own state or that of Serbia, the requirements for state action under both the ATCA and the TVPA are met. The *Doe* court erred in ruling that it did not have jurisdiction; Jane Doe and all others similarly situated should not be turned away.<sup>4</sup>

In addition to a roadmap that alerts the reader to the article's organizational scheme, authors should use headings and signposts (e.g., "the first reason," "the second reason," etc.) to orient the reader throughout the article, as well as transitional and concluding paragraphs for sections.

#### 4. *What Is Not in the Article*

As readers, most of us are conditioned to deal more with what an author discussed than we are to think about what an author left out. Editors, particularly in the substantive editing stage, need to think about what is not there as well as what is there in the article. More about how to do this will be included in the next section on how to do a substantive edit.

#### 5. *What Is in the Text versus What Is in the Footnotes*

Scope and focus — those are the two content touchstones for most articles. Editors often have to help authors determine how wide or how narrow of a slice the author should take on a topic. What is meaningful? What is manageable? While defining the scope and focus of an article is done first through the thesis and then

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4. Susan L. Ronn, *Jane Doe, On Behalf of Herself and All Others Similarly Situated: Radovan Karadzic in United States District Court*, 19 Seattle U. L. Rev. 289, 290–291 (1996).

through the roadmap, substantive editing guidance about what goes in the main body of the text and what goes in footnotes will help an author keep an article on track. The substantive edit also is the time to point out when the author needs footnoted authority for points made in the text.

### 6. *The Author's Voice*

Every author has a “voice” that he or she brings to an article. The voice may be objective, passionate, professional, strident, caring, sarcastic, haughty, energetic, cavalier, friendly, hesitant, or cynical, to name a few. It also can be a combination of two or more of these attitudes. In other words, voice is the personal stance that the author has taken toward his or her topic, thesis, and readers; it is the human being behind the words.

Editors need to consider and comment on voice as part of the substantive editing stage, but they should do so with a great deal of care and diplomacy. After all, asking an author to change his or her writing voice is tantamount to suggesting that the clothing they are wearing is not quite appropriate.

#### B. How to Do a Substantive Edit

Knowing what to focus on in the substantive edit — thesis, reasoning and arguments, large-scale organization, what is not in the article, and what is in the article versus what is in the footnotes — is half the battle. The other half is developing a process for *how* to do a substantive edit. The temptation to revert to line editing, or technical editing, is strong, because those mistakes are on the surface of the writing. They seem to jump off the page, distracting the editor from seeing the deeper, more significant content problems. The following seven-step substantive editing process helps to ensure that the hard work of reading for content gets done at the right point in the editorial process.

#### *Step One: Read the Article All the Way through Once Like a “Real” Reader.*

Without a pen in hand (which might tempt you to begin technical editing), read the article straight through. If you can, try to imagine yourself in the role of a real world reader who hopes to use the article in some way. For example, imagine that you are a judge planning to use the article as support for a decision or a practitioner



hoping to find help for a client's problem. Once you have completed the article, write down four things.

1. Write down your reaction to the article. This can be a visceral or gut-level response. Were you bored? Fascinated? Angry? What intrigued you? Did you start to lose interest at some point? If so, where? This reaction should help you get at whether the thesis is timely, original, and important.

2. Without returning to the article, try to write down the thesis. If you have trouble stating the thesis, that usually means it was not clearly articulated by the author. If necessary, use language like "I think your thesis is \_\_\_\_\_, although you later seem to be saying \_\_\_\_\_."

3. Without returning to the article, try to write down the key supporting arguments.

4. Write down what you thought were the most memorable features about the article. Authors need to know what points stick with their readers.

### *Step Two: Read the Article Again.*

On this second reading, check your version of the author's thesis against the written thesis statement. Check your version of the key arguments against the written arguments. Make notes about any discrepancies, ambiguities, or any other problems you notice about the thesis and key arguments. If several people read the article and come up with different versions of the thesis, that obviously suggests that the thesis needs clarification. Using the content touchstones of scope and focus, ask yourself whether the author has carved out the right size slice, and whether he or she has maintained the focus promised in the thesis. Use some system (e.g., underlining) to note all of the author's efforts at developing connections between ideas.

### *Step Three: Outline the Article.*

To uncover the author's organization, try to create an outline of the article or at least of the portion of the article for which you are responsible.<sup>5</sup> Although these after-the-fact outlines are time-

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5. While most law reviews require student authors to submit outlines of their articles, many of the submitted articles considerably differ from their earlier outlines. An after-the-fact outline is an excellent way to get an overview of the structure of the article as it actually is written. By contrast, faculty and practitioner authors rarely submit outlines with their

consuming and sometimes difficult to do, they are wonderful ways to reveal the true structure of an article.<sup>6</sup> In creating the outline, restrict yourself to one phrase or sentence per paragraph. Note whenever outlining becomes difficult. Note whenever you are unsure at what level to place an outline sentence (at II. or B.?). If you cannot outline the article, obviously there are problems with the organization.

*Step Four: Consider What Is Missing.*

After two readings and creating an outline, it is now time to consider what is not in the article. Look first at whether the author missed any standard moves of legal argumentation. Has he or she addressed rebuttal arguments? Has he or she addressed all the policy issues, including the countervailing policy arguments?

Then consider whether any points need development. This is such an important point that it bears repeating: consider whether any points need development.

Consider asking an expert in the field to read the article and make suggestions, particularly about what might be missing. In fact, you may have someone on your school's own faculty who would be an ideal expert reader, or someone on the faculty may suggest an expert reader who is in practice or at another law school.

Finally, read about the topic in other sources.<sup>7</sup> You will have to be up to speed on the topic and thesis before you can make more than marginally useful suggestions about what else the author should include in the article. Be sure that this reading includes treatises, if you need some background education, the key cases, and other relevant law review articles.

*Step Five: Read the Article Again, Role-Playing a Hostile Reader.*

The focus of the third reading of the article is on how it can be undermined or attacked. The best way to probe the article for weaknesses is to role-play a reader intent upon disagreeing with the

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articles.

6. Anne Enquist, *After the Fact Outlines: An Old Idea Put to a New Use*, 6 Wash. Eng. J. 29 (1984); see Laurel Currie Oates, Anne Enquist & Kelly Kunsch, *The Legal Writing Handbook: Analysis, Research, and Writing* 154–156, 518–519 (2d ed., Aspen L. & Bus. 1998) (expanding on proper content in after-the-fact outlines).

7. The expert you asked to read the article also is the perfect person to ask for suggestions about a few titles that will give you the background education you need to edit the article.

thesis. Comment on all the places where the analysis or arguments are incomplete, faulty, sketchy, or unsupported.

*Step Six: Be Specific in Praise or Criticism.*

Throughout the substantive editing process, write comments to the author that are specific about both what is going wrong and what is going right in the article. Cryptic comments like “good,” “why?” or “irrelevant” are only marginally helpful. Go beyond labeling problems and try to explain your confusion, offer suggestions, and give the author as much as you can to go on.

*Step Seven: Write a Professional Critique.*

Using all the notes and comments and the outline that you have collected in the first six steps, type a professional critique of the article. Use either a memo or letter format, and systematically address the substantive editing aspects of the article. As a general rule, do not mention any problem that will be addressed in the technical edit unless you observe numerous examples of the same problem (e.g., most paragraphs would benefit by adding a topic sentence, or the author consistently writes excessively long sentences).<sup>8</sup>

Relying on scrawled comments in the margins of a draft has numerous problems: handwriting is often illegible, there is little space to write in, your initial phrasing may not be the best; it is hard to edit handwritten margin comments; and the end result seems to mar the author’s work. A typed professional critique that refers to specific page and paragraph numbers avoids these problems and sends the message that the substantive editing was done conscientiously.

With all seven steps to substantive editing, the key is to remember that editing is an active process. A good substantive editor does not sit back and passively accept what is in the article. A good substantive editor thinks hard and carefully about what is going on in the article; he or she becomes involved in its subject matter and the execution of the thesis. The trick, of course, is to find the right amount of active editorial involvement in the article while stopping far short of becoming a coauthor. Without co-opting the

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8. If the article arrived in great shape technically and needs relatively little substantive editing, you may begin commenting on the small-scale organization issues.

article, the good substantive editor supplies a fresh perspective to everything the author has written and adds a huge dose of energy to help the author take the article to the next level.

### C. What to Look for in a Technical Edit

If substantive editing looks at the forest, technical editing looks at the trees, branches, leaves, and even the veins on the leaves. Technical editing is what most people imagine when the word editing is used; it is the meticulous examination of the smaller details in a piece of writing. With pen in hand, the technical editor slowly moves through the manuscript, line by line, word by word, even space by space.

Given the description in the last sentence, it may sound like the only real trick to good technical editing is to overcome the inevitable tedium that comes with moving through an article so carefully. Actually, there are two other important aspects to effective technical editing: (1) knowing when to make a stylistic recommendation and when to leave the author's style alone; and (2) not overlooking any of the various types of minor writing problems and errors. Both require that the technical editor know the difference between true errors and stylistic options, and in the case of stylistic options, know when a choice is one of personal preference and when it is a choice between an effective and an ineffective style.

Correcting true errors is obviously not negotiable; those changes must be made. Comments about style are another matter. Generally speaking, a light hand is preferable when it comes to comments about an author's style, and those comments should be phrased as suggestions or recommendations. Good technical editors realize that many authors will not necessarily phrase things exactly the way that they, the editors, would. This is a good thing. Instead of bland uniformity, articles will have distinctive, interesting personalities.

### D. How to Do a Technical Edit

There are at least six aspects of an article that the technical editor must check: (1) small-scale organization; (2) readability; (3) precision; (4) conciseness; (5) grammar, punctuation, spelling,

and mechanics; and (6) a flawless physical text.<sup>9</sup> Obviously, it is unrealistic to address all six in the same reading. As with substantive editing, good technical editing requires a system to ensure that nothing is missed. And, as with substantive editing, “the system” is essentially a triage approach.

*Step One: Focus on Paragraphs.*

Earlier, the paragraph was described as a kind of boundary line between substantive and technical editing, with larger concerns that were at the paragraph level and above being addressed in the substantive editing stage and smaller concerns that were at the paragraph level and below in the technical editing stage. Given that articles arrive in a variety of conditions – from diamonds in the rough to smoothly polished gems – technical editors simply need to realize that on a given article there may still be a fair amount of work to do at the paragraph level.

Although an after-the-fact outline of the article already should have been done,<sup>10</sup> the technical editor should begin by creating the same kind of outline for the section of the article he or she is responsible for technical editing. In many cases, the article will have changed significantly during the substantive editing phase, so this second after-the-fact outline provides another invaluable check on the small-scale organization. When doing the after-the-fact outline, note whether the author has used topic sentences that set up the key point made in each paragraph. This is also the best time to check for concluding sentences in paragraphs.

As part of the focus-on-paragraphs step, pay attention to the overall physical layout of the article. Is it “reader friendly”? Are any paragraphs so long that they are intimidating to read or so short that they appear skimpy and undeveloped?

*Step Two: Read Aloud to Check for Readability.*

Readability, that is, whether the writing is easy to read and has a natural flow to it, is best determined by simply reading the writing aloud. Reading aloud allows the reader to hear, quite literally, where the writing flows and where it jerks, jolts, or sputters. To get

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9. Cite and source checking are not included in this list, because they constitute a separate editing stage. See generally Darby Dickerson, *Citation Frustrations — And Solutions*, 30 Stetson L. Rev. 477 (2000).

10. Oates, Enquist & Kunsch, *supra* n. 6, at 518–519; Enquist, *supra* n. 6.

the maximum benefit from reading an article aloud, try standing up and reading as though proclaiming what is written.<sup>11</sup> This exaggerated reading style will emphasize any bumps or thuds in the writing, making it easier to pick up problems in sentence structure and rhythm. Mark any sentence where you stumble, have to reread, or hear a hiccup in the writing. A reasonably good reader will read well-constructed sentences correctly the first time through. Having to stop and reread a sentence is an almost sure sign that the sentence needs rewriting. When in doubt about whether the problem is in the writing or in your reading, have someone else read that section aloud to you.

Reading the text aloud also is an effective way to spot sentences that are too long. Any sentence that leaves a reader breathless should be edited for conciseness, broken into two or more sentences, or both.

Although the read aloud strategy helps editors find sentences that need revising, the strategy does not immediately suggest how to fix whatever is amiss in the sentence. Editors need to be knowledgeable about several key aspects of good writing, such as the use of transitions, dovetailing,<sup>12</sup> and emphasis,<sup>13</sup> before they can make informed recommendations about needed changes. Reading the recommended change aloud is usually the best way to test whether it will work in context.

### *Step Three: Check for Precision.*

Most editors are aware of precision issues in terms of individual words (e.g., the subtle differences in words like “dishonest,” “deceitful,” and “untruthful”) and simply have to scrutinize an article for word choices that do not convey the exact intended denotation and connotation. More difficult to spot are imprecise combinations of words — verbs that describe actions that cannot be done by the subject of that verb or actions that cannot be done to the object of the verb. For example, in a sentence like “Public policy argues persuasively that a woman’s right to fetal tissue should be restricted,” the verb “argues” is being done by the subject “public policy.” However, public policy does not make arguments; argu-

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11. Most people who try to read something aloud at their desk will quickly revert to a quiet mumble. *Sotto voce* readings do little to allow the reader to hear whether a piece of writing has a good natural flow.

12. Oates, Enquist & Kunsch, *supra* n. 6, at 574–580.

13. *Id.* at 292–294, 608–612.

ments are made based on public policy. Consequently, the sentence has an imprecise subject-verb combination.

To catch imprecise subject-verb and verb-object combinations, simply go through the article using “S,” “V,” and “O” to mark the subjects, verbs, and objects, and then ask yourself, can this subject/actor do this verb/action to this object? Note that marking the subjects and verbs also will allow you to determine if a sentence is written in the passive voice when the active voice would be more effective.<sup>14</sup> It also will help you spot sentences that have too many words between the subject and the verb.<sup>15</sup>

*Step Four: Check for Conciseness.*

Although initially time-consuming, marking the subject-verb-object combinations in each sentence has yet another benefit: it will help you edit for conciseness. Is the real action in the sentence located in the verb, or is the verb slot wasted on filler language? Many sentences waste both the verb and the subject slots by filling them with throat-clearing language.<sup>16</sup> Sentences that begin with phrases such as “it is clear that,” “it is important to note that,” and other similar throat-clearing language have “it” as the subject and “is” as the verb. The real point of the sentence is made after the word “that.” A sentence like “It is clear that the statute requires that service be made at the dwelling house or usual place of abode” should be edited down to, “The statute requires that service be made at the dwelling house or usual place of abode.”

Determining whether the real action is located in the verb also helps editors spot wordy verb-object combinations such as the following examples:

reached an agreement	→	agreed
made a statement	→	stated
performed a review	→	reviewed

Because wordiness is such a common problem in law review writing, editors may find it helpful to immerse themselves in a good editing-for-conciseness manual, such as Professor Richard C. Wydick’s *Plain English for Lawyers*,<sup>17</sup> right before an editing session. Such an

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14. *Id.* at 587–593.

15. *Id.* at 597–599.

16. *Id.* at 595, 645–647.

17. Richard C. Wydick, *Plain English for Lawyers* (4th ed., Carolina Academic Press 1998).

immersion will heighten an editor's awareness of inherently wordy phrases such as "established pattern," which has an unnecessary adjective, and "scrutinize carefully," which has an unnecessary adverb.

*Step Five: Check for Grammar, Punctuation, Spelling,  
and Mechanical Errors.*

People become law review editors because they are extremely bright, hard-working law students who can write well. Being a bright, hard-working, and excellent writer, however, does not necessarily mean that those same individuals will know all the rules of grammar, punctuation, spelling, and mechanics well enough to spot errors in other people's writing. Many good writers just seem to have a feel for language; they know, almost instinctively, how to put their ideas in writing. They do not fear writing, but they may fear editing someone else's writing. They realize that it is one thing to do it well yourself; it is another to help someone else do it well.

The solution is to bring several resources along when checking for grammar, punctuation, spelling, and mechanical errors. First and foremost, bring those writing instincts. They are invaluable. When all else fails, you can always fall back on "this is how I would do it." Second, find and become acquainted with two or three resource or reference books<sup>18</sup> that you can turn to when you are unsure about the rules. Review the sections on pronoun agreement, pronoun reference, modifiers, and parallelism.<sup>19</sup> Most grammatical problems fall into one of these categories. Refresh your memory on the basic rules for using commas,<sup>20</sup> apostrophes, semicolons, and

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18. Your legal writing textbook may have a section on grammar, punctuation, and mechanics. For example, *The Legal Writing Handbook*, second edition, has fully developed sections on a majority of grammar, punctuation, and mechanics issues that occur in writing about law. *E.g.* Oates, Enquist & Kunsch, *supra* n. 6, at chs. 26, 27, 28. It also contains a Glossary of Usage in the back of the book that deals with troublesome pairs like affect/effect, infer/imply, that/which, and who/whom. *Id.* at 905–914. Another invaluable resource, particularly for nitpicky questions, is the *The Chicago Manual of Style* (14th ed., U. Chi. Press 1993). An excellent general dictionary is *The American Heritage Dictionary of the English Language* (3d ed., Houghton Mifflin Co. 1992). Bryan A. Garner's *A Dictionary of Modern Legal Usage* (2d ed., Oxford U. Press 1995), is yet another reliable resource.

19. Parallelism is important not only at the sentence level, but also at higher levels. For example, if the article contains several headings, those headings must be parallel with each other.

20. See Oates, Enquist & Kunsch, *supra* note 6, at 762 to 764, for an overview of comma rules. The same chapter, Chapter 27, also contains what you will need to know about apostrophes, semicolons, colons, ellipses, and quotation marks.



colons. Third, be willing to call in reinforcements if you are not sure about something. Consult with other members of the law review, reference librarians, or legal writing faculty if you are unsure about whether something in the article is correct or incorrect and cannot find the answer in one of the reference books. Do not “let something go,” the final product reflects on your professionalism as well as the author’s. Fourth, bring a great deal of patience to the task. Be prepared to move slowly through the article, focusing not on the big ideas at this point, but on the minutiae. Triple-check everything, particularly dates and the spelling of names, so that you end up with a flawless text.

*Step Six: Use the Law Review’s Marks for Proofreaders.*

Although the technical editor will probably type up any extended comments about the small-scale organization, topic sentences, or the physical layout of the article, the majority of the technical edits involving individual sentences, phrases, words, or punctuation will be done right on the article. And, while it is tempting to use one’s own idiosyncratic marking system, that approach often creates confusion and costs precious time as the author tries to second guess what the marks mean. Using the standardized marking system for proofreaders keeps editors and authors on the same page and speeds the process along.

### CONCLUSION

Being a law review editor is an unusually rewarding experience. It is an opportunity to observe the creative process close at hand and to participate in the creation of articles that may have a profound impact on law. Unlike the scowling curmudgeon hunched over a manuscript or the hair-in-a-bun crone with the vicious red pen, good editors are more like an author’s best friend. Their involvement in the completion of an article includes everything from hard, pointed questions to lavish (when deserved) praise. Good editors ponder, recommend, push, cajole, encourage, demand, and double-check. During substantive editing, they help authors step back to see the big picture, and during the technical edit, they help authors zoom in to see the most minor detail. In short, they are the second pair of eyes and the second brain that makes each article work.

## APPENDIX A

Date: December 28, 1993  
To: Michele Radosevich  
From: Don Black  
Re: Substantive edit of Green Article, pages 25–31.

In order to understand the context of the section that you assigned for me to edit, I read the first 25 pages of the article. The first comments about the large scale organization and the substance of the article deal in part with these first 25 pages.

### **Thesis:**

Nowhere in the pages I have read could I find the thesis explicitly stated. At various points the author makes certain assertions, but the author's purpose in writing the article is not clear. My perception of what the thesis is would be: Revoking or refusing to renew Most Favored Nation Trade status for the People's Republic of China in order to pressure the government to improve human rights would actually result in restraining development of human rights protections. Even if this is an accurate description of the author's thesis (proving that if I can figure it out anyone can) it would be very helpful to the reader to have this clearly stated somewhere in the introduction.

### **Large Scale Organization:**

There are no roadmaps anywhere in the portion of the article I read. (pp. 1–31). The Introduction contains no Macro level roadmap for the reader as to the overall structure of the article. Neither did any of the individual sections I looked at. As a reader, I would have found it especially helpful to have found in the Intro at least a brief glimpse into what the author intended to show and how he intended to get there.

As a practical matter, not having a road map and not having the whole article to look at made the large scale organization unclear to me. The basic structure of the first three sections makes sense (I. Intro., II. Current Human Rights (HRs) status in China, and III. Use of MFN to promote HRs.) The structure underneath section III

was more understandable after I outlined it and could be helped by adding a roadmap at the beginning of the section. Section IV's title (The Shift of Power from Central Governments to People, p. 19) and purpose were not at all clear. From its title and the part of the section that I read, I was not sure what its purpose was. It appears that this is probably part of the author's main analysis and argument. However, the subsections do not all flow naturally from one to the other. The first section adequately describes the popular view in regards to the relationship between trade and human rights, and what I perceive to be the view which the author wants to argue (Economic development in the form of increased imports will result in improved rather than worsened human rights conditions). (p. 19). The relationship between this argument and the title of the Section (Shift in power . . . ) is not clear. My point is that the title and organization of Section IV does not add to or aid the reader's understanding of the article and the position the author is advocating. (There will be more on Section IV when I discuss the small scale organization).

#### **Small Scale Organization: Section IV**

**Subsection A** presents a good introduction to the Section, it would be clearer if that were reflected in its title. (p. 19). As I stated previously, the author sets out in this subsection the assertion he is trying to support.

**Subsection B** then gives a good western historical basis for his assertion. (p. 21).

In **Subsection C**, he needs to explicitly state that there are alternative ways to measure human rights than those traditionally used in the United States. The title of the subsection implies that this is what he is doing, but it would be more helpful if he explicitly stated that this is what he was doing and explain why it is important and valid to measure human rights in this alternative way. (pp. 23-25). The last paragraph of Subsection C (paragraph 1, p. 25) seems out of place. In the beginning of the section, he has been arguing that this alternative economic rights model is legitimate and then in the last paragraph he asserts that the Chinese government cannot take credit for any recent economic growth. While this may be true, on its face it is not relevant to legitimizing this alternative measure. Implicitly, maybe he is arguing against China offering this alternative measure of human rights as a post hoc rationalization that cannot be attributed to a conscious decision of the government and therefore cuts against the legitimacy of this

alternative measure. If so, the author is failing to consider that government inaction may be the result of conscious decision making for which they should get credit. Either way, the argument needs to be explicitly made.

**Subsection D** seems out of place. (p. 26). This section is making the observation that while the economy of China has improved, relative to its size it still has a long way to go. While an insightful observation, it needs to be explicitly linked to the assertion he is supporting in this section: that economic development will lead to increased development of HRs protections. (E.g. Because there is such a long way to go, further economic growth will continue to produce an increasing amount of HRs protections.)

**Subsection E** does a good job of pointing out a tension that many readers will have thought of between the economic prosperity/increased information/more freedoms model and the authoritarian nature of the Chinese Government. It is a good move to point out potential rebuttals to his theory, but he should at least try to reconcile it with this theory. If this tension is going to result in further crackdowns, how will the economic rights first model deal with it? Will it provide a resolution or does the model break down at this point?

**Subsection F** almost appears to be a conclusion to his argument articulated in subsection A. (p. 28). He does a good job of tying the arguments all together and concluding that the reward v. punishment question is the wrong one to ask. If this is his conclusion, **Subsection G** might better be the start of a new section where he supports his thesis by comparing it to other political models. Having not read the whole article, I do not know if that will work or not. Alternatively, he could reorganize Section IV starting with his assertion from Subsection A and then having two subsections (plus whatever follows subsections G): A — the empirical analysis and B — the comparative nation analysis.

In any case, the organization of Section IV can be improved by starting with a road map, making the arguments and rationales more explicit, and a better use of transitions between the various subsections.

### **Arguments**

**Subsection C** (p. 23 – 25) Will a prosperous middle/business class extend protections for individual freedoms to the poor? Has the US effectively done so?

**Subsection D** (p. 25) Because China is so big and so poor more when looked at on a per capita basis, can the economy ever improve enough to bring about an acceptable level of HRs protections? Should the US be concerned with the speed in which these improved protections may take to arrive if left to the economic development model?

### Footnotes

- p. 26, after fn 29, end of sentence at top of page citing per capita income figures: there should be a cite to where these number come from.
- p. 26, paragraph 1: it would be nice to have some support for the assertion that China's economy is growing.
- p. 27, paragraph 1, sentence 2: Should be cite to authority for fact that Cellular phones and fax machines were crucial to the 1989 demonstrations.
- p. 28, paragraph 1, fn. 31: Is that also supporting the figures used in the previous sentence?
- p. 28, paragraph 2: Should have a cite to support the assertion of the crackdown.

## APPENDIX B

### MEMORANDUM

TO: Lisa Van Atta  
FROM: Mark Rosencrantz  
DATE: Jan. 14, 1995  
RE: Substantive Edit of Bryan Smith's Article, pages 9 –  
17 and accompanying footnotes.

In order to understand the context of the section that you assigned for me to edit, I read the entire article. The comments about the large scale organization and the substance of the article deal in part with the entire article.

#### **Thesis:**

The author of the article outlines his thesis quite clearly on pages 3–4 when he writes “This Comment argues that every state should allow professionals to take advantage of LLC statutes in order to provide protection for accountants and lawyers from the wave of litigation that has come about in recent times and to restore an element of confidence to these professions. This Comment further asserts that allowing professionals to use LLC statutes is consistent with the duties peculiar to the accounting and legal professions, and is a necessary stop when viewed in light of the policies of fairness, efficiency, and public protection.” Additionally, the author revisits his thesis on page 26 when he writes “However, this Comment addresses one option that will provide a foundation for a stronger professional industry. This option is the professional limited liability company.”

#### **Large Scale Organization:**

Large scale organization in his article is very good. The author clearly sets out in the **Introduction** the crisis at hand, reasons for it, that accountants (CPAs) and attorneys are being affected, and that the LLC is the answer. The thesis of the article is clearly laid out on pages 3–4, and there is a good macro road map on page 4. Additionally, the author revisits and sharpens his thesis on page 26

as a dovetail into **Parts III–IV**, which lay out his solution and its reinforcement.

The author has good internal organization, laying out the problem at hand, showing what will happen if it continues, and then introducing a solution. He then shows exactly how his solution would help solve the crisis and finishes by anticipating and discussing criticisms of his organization, but I see no major flaws at this point.

### **Small scale Organization:**

**Part II** begins with a good macro road map to the part, giving a synopsis of each section. **Section A** clearly sets out the problem with a list of highlights and then extends the analysis by showing that although the Big 6 accounting firms are the ones that are grabbing headlines, smaller firms are feeling the pressure as well. **Section B** has a good dovetail from **Section A**, and extends the analysis to attorneys. Again, examples from the headlines start out the section, and more specifics are then added, providing an easy to follow structure between the two sections that have the same function for the two professions. It might be good if the author was able to find some statistics about smaller law firms as he did in **Section A** for CPAs.

**Section C** extends the analysis by explaining why the lawsuits talked about in Sections A & B have been filed.

The author does an excellent job of clarifying exactly what kinds of liability risks CPAs and attorneys face in his “Hypothetical Thrift Failure” in **Section II A1b**. He might strengthen the hypothetical, however, by somehow showing in the first full paragraph of page 11 that is/was not in any way customary for attorneys or CPAs to examine such transactions to see if dummy corporations are being used. [I have run across sources to this effect during research for my own article]. Federal regulators are vigorously asserting that the duty existed while professionals are asserting with equal force that the duty never existed. Likewise, in **Section II A2** the author clearly lays out, again with an example, of the potential pitfalls inherent in the issuing of securities and the resulting “10b-5” litigation. The last sentence of **Section II A2** provides a good dovetail into **Section IID** by setting out the question to be answered. This section might be slightly clearer if the author laid out the reasons for the enormous number of suits at the top of the section or if he used numerical signposts within the section. This isn't a significant problem, and

there are adequate transitions within the section, but it might be considered.

**Part III** begins with an overall road map and qualifies upcoming statistics and arguments that could be confusing as to who they apply to. Although there is no overall road map at the top of **Part III** as to what the potential effects of the litigation crisis are, the internal subheadings break down the material into manageable portions that readers should be able to handle. Nevertheless, consideration might be given to expanding the road map that is started with the first sentence of the part. Sections C & E might be made concurrent, or even combined. It would seem that loss of individuals within a profession is concurrent to loss of firms within the same industry. Further, the analysis could be overlapped and extended. In combining or moving things, however, the first full paragraph on page 26 should be left in place as it is an excellent transition to Part IV.

**Part IV** — There is some repetition on the tax advantages of LLCs versus that of PCs that might be removed on pages 28 and 32. Both sections [A2b and C] mention that PCs are subject to double taxation versus the pass through taxation of LLCs. Although only one sentence or two should probably be removed, it still might be looked at.

**Part V** is confusing only to the extent that the author switches from using large capital letters as his primary section markers to numbers. Additionally, the last sentence of the first paragraph of part 3 [page 38] seems confusing. How will LLC protection allow uninsured firms to stay afloat? All of the firms assets are still available to satisfy judgments, as are the personal funds of all professionals found to be negligent, etc. I understand that LLC protection would encourage individuals to stay within the profession, but I fail to see how firms will be kept in business.

**Part VI** begins with a good macro road map of the part. Subsection 1 ends with a great transition into Subsection 2, which does a good job of contrasting the two professions while showing all of the similarities in this area. Subsection 3 does a good job of applying what was presented in Subsections 1 & 2. While Subsection 3 does not have an internal road map, it seemed clear enough to me. Nonetheless, adding one might be considered. Section B does a good job of tying up things that have been mentioned throughout the article, ensuring that nothing mentioned in the beginning parts of the article is dropped from final consideration.



### Footnotes

The biggest problem with the footnotes is that not all of the ids and supras match up. I am assuming [especially because Bryan is an R & T editor] that the article has been revised since the ids. and supras were put in, but they will still need to be fixed before the source and cite. I have some specific comments on individual footnotes:

#### Potential Additional Footnotes

There might be a footnote after the third sentence of the first full paragraph on page 11 as to the existence or lack of a general duty for attorneys or CPAs to check for dummy corporations, etc. My understanding is that federal regulators are asserting that the duty existed, something that the legal and accounting professions are vigorously disputing.

There might also be a new footnote after the first sentence of the second full paragraph on page 13, dealing with what the typical 10b-5 case is.

Also, somewhere in the 10b-5 example, the author might lay out what the typical duties are for CPAs and attorneys in these cases and show how the standards are being changed so as to impose liability.

#### Specific Footnotes

- Fn. 64 — This footnote is a little brief. As readers will likely not have a copy of the statutes in front of them while reading and the statute is not a key part of the article, this should probably be expanded. What is the amount/percentage that banks are limited to lending?
- Fn. 70–71 — These footnotes are also a little brief for the same reasons as fn. 64. It would be helpful to have a slightly better idea of exactly what the statutes call for.
- Fn. 72–73 — Perhaps add a parenthetical onto one of these about what other things accountants or attorneys typically do in these cases.
- Fn. 131 — That number is about 36 now. It needs to be updated.
- Fn. 143 — I'm almost positive that Oregon also prohibits professionals from being LLCs. It certainly does have some law on the books regarding attorneys or professionals limiting their liability.

- Fn. 166 — The Connecticut Bar Association has also spoken on the issue of limited liability for attorneys, and has come down favorably in an informal ethics opinion.

